

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

NASHVILLE CITY CENTER

511 UNION STREET, SUITE 2100

POST OFFICE BOX 198966

NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380

FACSIMILE
(615) 244-6804
WWW.WALLERLAW.COM

D Billye Sanders
(615) 252-2451
bsanders@wallerlaw.com

RECEIVED
TENN. REG. AUTH.
MAY 6 2000
809 SOUTH MAIN STREET
P. O. BOX 1035
COLUMBIA, TN 38402-1035
(931) 388-6031
EXECUTIVE SECRETARY

May 5, 2000

Via Hand-Delivery

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: Application of Memphis Networkx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement Between MLGW and A&L regarding Joint Ownership of Memphis Networkx, LLC; Docket No.99-00909 - Explanation of Settlement Agreement and Amendment to Application

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the Explanation of the Settlement Agreement that resulted in an amendment to the above referenced application.

Sincerely,



D. Billye Sanders
Attorney for Memphis Light Gas & Water
Division and Memphis Networkx, LLC

DBS:lmb
Enclosures

cc: Parties of Record
J. Maxwell Williams, Esq.
Ward Huddleston, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**APPLICATION OF MEMPHIS NETWORKX, LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATION SERVICES AND JOINT
PETITION OF MEMPHIS LIGHT, GAS & WATER
DIVISION, A DIVISION OF THE CITY OF
MEMPHIS, TENNESSEE ("MLGW") AND A&L
NETWORKS-TENNESSEE, LLC ("A&L") FOR
APPROVAL OF AGREEMENT BETWEEN MLGW
AND A&L REGARDING JOINT OWNERSHIP OF
MEMPHIS NETWORKX, LLC**

DOCKET NO. 99-00909

**EXPLANATION OF SETTLEMENT AGREEMENT
AND AMENDMENT TO APPLICATION**

COME NOW, Applicant, Memphis Networkx, LLC and Joint Petitioners, Memphis Light, Gas & Water Division and A&L Networks-Tennessee, LLC and provide the following explanation and clarification for the document titled, "Amended Application of Memphis Networkx, LLC," which was filed in this docket on May 2, 2000, and identification of the issues it resolves in this proceeding.

1. The heading in the document should be revised to indicate that the document is a "Settlement Agreement" which contains stipulations agreed to by the parties. Some of those stipulations are within the jurisdiction of the TRA to incorporate in an order granting the amended request for a certificate and some are outside the TRA's jurisdiction and/or the scope of this proceeding.

2. The affect of the portions of the Settlement Agreement that amend the Application (Stipulations 1, 2, 3, 5, and 6) would be to change Section 7 of the original Application which is found on page 5 of the Application by changing the proposed territory and scope of services consistent with the applicable conditions in the Settlement Agreement. Paragraph 7 of the original Application is therefore amended and restated as set forth in Attachment 1.

Although the Applicant applied for authority to serve end users, its primary intention was to be a wholesaler. It did not plan to market to end users other than governments. It planned to serve other similarly situated end users under its duty not to discriminate. The original plan was to serve residential end users, preferably through one or more third party content providers, beginning in approximately 3 years as the network was planned to be extended into residential areas. Memphis Networx will develop its network as contemplated in the original Application. Under the amendment, Memphis Networx or MLGW or their principals may apply to the TRA to serve under served areas at any time. However, Memphis Networx has agreed not to serve other end users directly for 5 years. The public interest will still be served by the modified Application by facilitating the entry of competition through other carriers.

3. As a result of the Settlement Agreement conditions in Section 1, 2, 3, 5 and 6 should be incorporated in the TRA's order granting the amended request for authority. The entire Settlement Agreement would be included in the record as stipulations, however, only the sections listed above would be enforceable by the

TRA. The other sections are contractual, enforceable by the parties in the appropriate forum. In the interest of full disclosure, the parties decided to file the full terms of their settlement with the Authority.

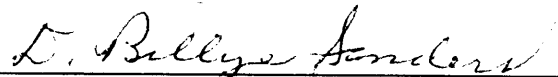
4. The recital section of the "Settlement Agreement" is an acknowledgement by the intervenors that the Applicant meets the criteria under the statute for approval of a Certificate of Convenience and Necessity as stipulated. This recital relates to the following issues on the TRA approved issues list, which attached hereto as Attachment 2: Issues 1, 2, 3, 4, 5 and 6. It is further an acknowledgement that MLGW's participation as a member of Memphis Networkx, will not be challenged by the settling parties under Issues 5 and 6. The recital is also an acknowledgement that, since the intervenors have agreed to support the amended Application, the intervenors have agreed that no additional conditions, rules and reporting requirements are necessary under Issues 7, 8 or 9, other than those already proposed by the Applicant and Joint Petitioners and agreed to in the Settlement Agreement.

5. Under Issue 6 with respect to cross-subsidy, the Time Warner companies and the TCTA raised concern regarding the following: (a) use of MLGW's existing infrastructure; (b) unrestricted access to MLGW personnel and customer information; (c) exploiting MLGW name recognition; (d) the deployment of facilities and entering into contracts prior to receiving regulatory approval. The Applicant and Joint Petitioners have addressed these issues in their Application, pre-filed testimony and information provided during discovery. Based upon

information gathered through this process and agreements reached in the Settlement Agreement, particularly Applicant's agreement to limit its service to the wholesale market which makes the issue of cross-subsidy less significant, the intervenors who are parties to the Settlement Agreement no longer object to the approval of the Application as amended. Consequently, the intervenors no longer plan to contest the granting the of the Application as amended or to present testimony in this docket.

The Applicant and Joint Petitioners have addressed the issue of cross-subsidy in their pleadings and testimony filed to date and intend to address any remaining cross-subsidy concerns of the TRA or any intervenor who is not a party to the Settlement Agreement. The Applicant and Joint Petitioners recognize that the TRA must make findings regarding the statutory criteria for approval in this docket.

Respectfully submitted,

A handwritten signature in cursive script, reading "D. Billye Sanders", is written over a horizontal line.

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis
A PROFESSIONAL LIMITED LIABILITY COMPANY
Nashville City Center
511 Union Street, Suite 2100
Nashville, TN 37219-8966
(615) 244-6380

Attorney for MLGW and
Memphis Networx, LLC

John Knox Walkup *by [signature]*
John Knox Walkup, Esq. *by permission*
Wyatt, Tarrant & Combs
511 Union Street
Suite 1500
Nashville, TN 37219-1750
(615) 244-0200

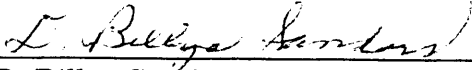
Attorney for A&L and
Memphis Networx, LLC

Henry Walker *by [signature]*
Henry Walker, Esq. *by permission*
Boult Cummings Conners & Berry, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, TN 37219

Attorney for NEXTLINK Tennessee, Inc.

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 5 day of May, 2000, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.


D. Billye Sanders

Henry Walker, Esq.
Boult Cummings Connors &
Berry, PLC
414 Union Street, Suite 1600
P. O. Box 198062
Nashville, TN 37219

Attorney for NEXTLINK, Tennessee, Inc.

Charles B. Welch, Jr., Esq.
Farris, Mathews, Branan, Bobango
& Hellen, P.L.C.
618 Church Street
Suite 300
Nashville, TN 37219

Attorney for Time Warner of the
Mid-South L.P., Time Warner
Communications of the Mid-South, L.P.,
and the Tennessee Cable
Telecommunications Association

R. Dale Grimes, Esq.
Bass, Berry & Sims
2700 First American Center
Nashville, Tennessee 37238

Attorney for Concord Telephone
Exchange, Inc., Humphreys County
Telephone Company, Tellico Telephone
Company, Inc. and Tennessee Telephone
Company

Guy Hicks, Esq.
Patrick Turner, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

Attorneys for BellSouth
Telecommunications, Inc.

Lee J. Bloomfield, Esq.
Allen, Godwin, Morris, Laurenzi &
Bloomfield, P.C.
One Memphis Place
200 Jefferson Avenue, Suite 1400
Memphis, Tennessee 38103

Attorney for the International
Brotherhood of Electrical Workers
Union, Local 1288

Amendment to Application of Memphis Networkx, LLC

[substitute existing Section 7 and replace with Section 7 below]

7. Proposed Telecommunications Services. Memphis Networkx intends to provide wholesale telecommunication services including local exchange services to carriers and providers, including but not limited to, competitive local exchange carriers, incumbent local exchange carriers, interexchange carriers, wireless carriers, shared tenant service providers, international transmission corporations, CATV providers, video on demand providers, security service providers, internet service providers, wide area network providers, inter-local network providers, virtual private network providers, application service providers, cable modem service providers and DSL service providers. Memphis Networkx also seeks authority to resell intraLATA local exchange and interLATA exchange services in Tennessee. Pursuant to the Settlement Agreement dated May 1, 2000 between Applicant and Joint Petitioners and certain intervenors in this docket (the "Settlement Agreement"): (1) Memphis Networkx agrees that it will only provide its services, on a wholesale basis, and at tariff rates (including approved Contract Service Arrangements), as applicable, to unaffiliated third parties; (2) Unaffiliated third parties will be regulated and governed under applicable law; and (3) Applicable sections of the Federal Communications Act of 1996, state law and the charter and ordinances of the City of Memphis will define "Affiliated party" and "conflict of interest." Self-dealing and conflict of interest provisions shall apply. Memphis Networkx or MLGW or their principals will not own, operate, or receive

any benefit, directly or indirectly from any retail provision of services in Tennessee in any geographic areas served by Memphis Networkx, except as provided in footnote 1.¹ Notwithstanding the foregoing, this provision shall in no way affect revenues or distributions from Memphis Networkx to its members, or other agreements MLGW may have with telecommunications providers regarding unrelated matters. This provision shall not apply to construction or maintenance services provided to Memphis Networkx by MLGW or A&L Networks, LLC or affiliates.

Memphis Networkx will provide wholesale local services over its own facilities as well as facilities of other carriers.

Within 3 years of commencing operations, Memphis Networkx plans to have the capacity for its network to serve small commercial and residential customers.

Memphis Network's customers will not be required to purchase customer premise equipment (CPE) which is not compatible with the incumbent local exchange carriers' systems.

¹ Any request to expand the authority granted for the purpose of providing services to retail, end user customers, shall be submitted by petition filed with the TRA and served on the intervenors in this proceeding identifying the "under-served" customers sought to be served together with an explanation of the absence or inadequacy of the service or services available to those customers. The parties agree that factors to be considered in determining whether a customer is "under-served" should include price, quality, choice and availability of meaningful service. Except as provided above, pursuant to the Settlement Agreement, Memphis Networkx will not seek modification of its CCN sought herein for a five (5) year period beginning June 1, 2000 to expand the scope of its authority as granted by the TRA.

LIST OF ISSUES

1. Does Applicant meet the statutory criteria and requirement set forth in Tenn. Code Ann. § 65-4-201, for a certificate to operate as a competitive local exchange carrier in Tennessee?
2. Whether Joint Petitioners and Applicant have complied with the criteria set forth in Tenn. Code Ann. § 7-52-103(d) and whether the Operating Agreement of Memphis Networx, LLC, dated November 8, 1999, adopted by MLG&W and A&L should be approved by the TRA?
3. What requirements, if any, are necessary to insure that start up expenses, already incurred, are correctly identified and properly allocated?
4. Does the MLG&W interest in Memphis Networx, LLC violate Article 2, Section 29 of the Tennessee Constitution?
5. To what extent, if any, is MLG&W's participation as a member of Memphis Networx, LLC in the proposal to offer telecommunications services affected by its charter and that of the City of Memphis?
6. Whether MLG&W and Memphis Networx have complied with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405.
7. What conditions, rules and/or reporting requirements, if any, are necessary to insure compliance by MLG&W and Memphis Networx with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405?
8. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance with the prohibition against anti-competitive practices provision of Tenn. Code Ann. § 7-52-103(d)?
9. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance, to the extent applicable, with Tenn. Code Ann. § 65-5-208(c)?

EXHIBIT 2